

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE OUTPATIENT MEDICAL CENTER
EMPLOYEE ANTITRUST LITIGATION

Master Docket No. 1:21-cv-00305-SRH-YBK

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINT STATUS REPORT RE: UPDATE
ON FACT DISCOVERY**

Pursuant to the Court's February 20 (Dkt. No. 362), March 14 (Dkt. No. 364), and April 4, 2024 (Dkt. No. 380) Orders, the parties file this Joint Status Report to provide an update on fact discovery, including: (1) depositions completed; (2) depositions scheduled and confirmed; (3) depositions needed but not scheduled; (4) the status of any settlement discussions; and (5) discovery of materials from third parties, including the United States Department of Justice (the "Government").

I. PLAINTIFFS' DEPOSITIONS

A. Completed Depositions

Plaintiffs have completed one deposition: Michael D. Staffieri (DaVita's COO) on April 5, 2024.

B. Scheduled and/or Confirmed Depositions

The status of each of Plaintiffs' scheduled and/or confirmed depositions is as follows:

Number	Deponent	Party	Date	Status
1	James Walker	USPI	April 23, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Mr. Walker's behalf, but has not yet confirmed a date for him to be deposed.
2	Peter Clemens	SCA	May 2, 2024	Deposition scheduled and confirmed.

Number	Deponent	Party	Date	Status
3	Jason Cagle	USPI	May 13, 2024	Deposition noticed but not confirmed. Plaintiffs state that they have served Mr. Cagle with the subpoena, and that he has not yet confirmed that he is available to be deposed on May 13, 2024.
4	Robert Chipman	DaVita	May 13, 2024	Deposition noticed but not confirmed.
5	James Rechtin	DaVita	May 16, 2024	Deposition noticed but not confirmed.
6	Anthony Martin	USPI	May 20, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Mr. Martin's behalf, but has not yet confirmed a date for him to be deposed.
7	Kristen DesPalmes	DaVita	May 21, 2024	Deposition scheduled and confirmed.
8	Alex Bateman	USPI	May 22, 2024	Deposition scheduled and confirmed.
9	Leslie Wachsmen	SCA	May 22, 2024	Deposition scheduled and confirmed.
10	Colleen Arthur	DaVita	May 23, 2024	Deposition scheduled and confirmed.
11	Mark Garvin	USPI	May 30, 2024	Deposition scheduled and confirmed.
12	Michael Loiacano	Third-Party	May 30, 2024	Deposition noticed but not confirmed.
13	Jimmy Tanner	Third-Party	June 4, 2024	Deposition noticed but not confirmed. Plaintiffs state that they served the subpoena on Mr. Tanner on March 28, 2024, and that he has not yet confirmed that he is available to be deposed on June 4, 2024.
14	Clare Metcalf	Third-Party	June 6, 2024	Deposition noticed but not confirmed.
15	Shannon McGarry	USPI	June 11, 2024	Deposition scheduled and confirmed.
16	James "Skip" Thurman	DaVita	June 17, 2024	Deposition noticed but not confirmed. Plaintiffs state that Mr. Thurman's counsel accepted service of the subpoena on April 3, 2024 but has not yet confirmed that Mr. Thurman is available to be deposed on June 17, 2024.
17	Cindy English	USPI	June 20, 2024	Deposition scheduled and confirmed.
18	Joseph Clark	SCA	June 27, 2024	Deposition noticed but not confirmed. SCA has provided Plaintiffs with alternative available dates.

Number	Deponent	Party	Date	Status
19	Laura Mildenberger	DaVita	July 11, 2024	Deposition noticed but not confirmed. Plaintiffs state that they are proceeding to serve Ms. Mildenberger with the subpoena, and that she has not yet confirmed that she is available to be deposed on July 11, 2024.
20	Sandi Karrmann	USPI	July 16, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Ms. Karrmann's behalf, but has not yet confirmed a date for her to be deposed.
21	Bridie Fanning	SCA	July 17, 2024	Deposition noticed but not confirmed.
22	Brian Mathis	SCA	July 24, 2024	Deposition noticed but not confirmed. SCA has provided Plaintiffs with alternative available dates.
23	Michael Rucker	SCA	July 24, 2024	Deposition noticed but not confirmed. SCA has provided Plaintiffs with alternative available dates.
24	Shannon Mosely	USPI	July 29, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Ms. Mosley's behalf, but has not yet confirmed a date for her to be deposed.
25	Joe Mello	DaVita	August 1, 2024	Deposition noticed but not confirmed. DaVita's counsel accepted service of the subpoena on Mr. Mello's behalf, but has not yet confirmed that he is available to be deposed on August 1, 2024.
26	Josh Golomb	Third-Party	August 2, 2024	Deposition noticed but not confirmed. Plaintiffs state that they served the subpoena on Mr. Golomb on March 28, 2024, and that he has not yet confirmed that he is available to be deposed on August 2, 2024.
27	Andrew Johnston	USPI	August 6, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Mr. Johnston's behalf, but has not yet confirmed a date for him to be deposed.
28	Brett Brodnax	USPI	August 7, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Mr. Brodnax's behalf, but has not yet confirmed a date for him to be deposed.

Number	Deponent	Party	Date	Status
29	Javier Rodriguez	DaVita	August 8, 2024	Deposition noticed but not confirmed. DaVita's counsel has not yet confirmed that Mr. Rodriguez is available to be deposed on August 8, 2024.
30	Dennis Kogod	DaVita	August 15, 2024	Deposition noticed but not confirmed. Plaintiffs state that they will proceed to serve Mr. Kogod with an amended subpoena, and that he has not yet confirmed that he is available to be deposed on August 15, 2024.
31	Bill Wilcox	USPI	August 20, 2024	Deposition noticed but not confirmed. USPI's counsel accepted service of the subpoena on Mr. Wilcox's behalf, but has not yet confirmed a date for him to be deposed.
32	William "Bill" Hughson	Third-Party	August 21, 2024	Deposition noticed but not confirmed. Plaintiffs state that they are proceeding to serve Mr. Hughson with the subpoena, and that he has not yet confirmed that he is available to be deposed on August 21, 2024.
33	Kent Thiry	Thiry	September 12, 2024	Deposition noticed but not confirmed.
34	Andrew Hayek	Hayek	September 18, 2024	Deposition scheduled and confirmed.

C. Depositions Needed But Not Scheduled

Pursuant to the Court's Order dated March 22, 2024 (Dkt. No. 376), Plaintiffs may issue up to ten additional deposition notices or subpoenas prior to August 1, 2024.

II. DEFENDANTS' DEPOSITIONS

A. Completed Depositions

Defendants have not yet taken a deposition.

B. Scheduled and/or Confirmed Depositions

The status of each of Defendants' scheduled and/or confirmed depositions is as follows:

Number	Deponent	Party	Date	Status
1	Allen Spradling	Plaintiffs	July 16, 2024	Deposition noticed but not confirmed. The parties are conferring to schedule the deposition for a date when Mr. Spradling is available.
2	Scott Keech	Plaintiffs	August 22, 2024	Deposition noticed but not confirmed. Plaintiffs will soon confirm whether Mr. Keech is available to be deposed on August 22, 2024.

C. Depositions Needed But Not Scheduled

By email dated March 28, 2024, Defendants notified Plaintiffs that they intend to cross-notice the depositions of Clare Metcalf, Josh Golomb, Jimmy Tanner, Bill Hughson, Michael Loiacano, Dennis Kogod, Skip Thurman, Bridie Fanning, and Jason Cagle. Defendants asked to be notified once Plaintiffs successfully served the deposition subpoenas on these witnesses so that Defendants may then properly serve cross-notices. Defendants also asked to meet and confer to discuss dates for these depositions that would work for all parties and the witness. Now that Plaintiffs have begun serving the third-party witnesses, Defendants expect those meet-and-confer discussions to occur soon. Defendants will serve cross-notices promptly thereafter.

Additionally, pursuant to the Court's Order dated March 22, 2024 (Dkt. No. 376), Defendants may issue up to ten additional deposition notices or subpoenas prior to August 1, 2024.

III. SETTLEMENT DISCUSSIONS

The parties do not have an update to report regarding settlement.

IV. THIRD PARTY DISCOVERY

A. Plaintiffs' Statement

Plaintiffs continue to serve subpoenas on relevant third parties, regarding both documents and depositions. Third parties have produced 1,126 documents since the parties' last discovery status report, filed on February 15, 2024 (Dkt. No. 361).

Plaintiffs have continued to meet and confer with the Government regarding Plaintiffs' subpoenas seeking materials related to the Government's now-concluded criminal investigation. On June 28, 2023, this Court denied without prejudice Plaintiffs' motion to compel these materials, and held that Plaintiffs needed to obtain rulings from the District Courts in which the two grand jury proceedings occurred (namely, the District of Colorado and the Northern District of Texas) regarding access to grand jury materials, and asked the Government to provide Plaintiffs with information regarding the "the scope, quantity and nature of these materials, preferably in the form of an index or chart[.]" Dkt. No. 293.

Since that Order, the Government has provided Plaintiffs with only a partial index regarding materials related to the Colorado proceedings, and no index whatsoever regarding materials related to the Texas proceedings. While the Government has agreed to provide the information the Court requested, the Government has refused to provide a date by which it will do so, and has indicated that it will likely not complete this task for several additional months. By then, it may be too late for Plaintiffs to take the necessary steps to compel production of materials Plaintiffs may need.

In addition to being tardy and incomplete, the indexes also fail to provide sufficient information regarding the documents they do identify for Plaintiffs to determine whether to seek the withheld documents, and how to evaluate the Government's bases for withholding them. For instance, one index entry describes a document only as "sealed filing." All exhibits the Government provided to the grand jury are described only as "Grand jury exhibit." Such "vague and generic description[s]" do not provide sufficient information for Plaintiffs or the Court to assess the relevance of the documents or the basis for the Government's withholding. *RBS Citizens, N.A. v. Husain*, 291 F.R.D. 209, 218 (N.D. Ill. 2013).

Plaintiffs respectfully request the Court to order the Government to provide Plaintiffs with complete indexes regarding responsive documents it intends to withhold from Plaintiffs by a date certain. Plaintiffs suggest 30 days from the entry of an order. Plaintiffs also respectfully request that the Court require the Government to describe the responsive, withheld documents with sufficient detail so that Plaintiffs and potentially the Court can determine the importance of the withheld materials and evaluate the bases for the Government's withholding.

Despite the Government's failure to provide Plaintiffs with the index information that the Court requested nearly ten months ago, Plaintiffs filed a Petition with the District of Colorado seeking access to the related grand jury materials, in light of the depositions described above that have now begun. *United States v. DaVita Inc., et al.*, Case No. 1:21-cr-00229-RBJ (D. Colo. Mar. 2, 2024), Dkt. No. 297. On March 29, 2024, the District of Colorado held that the only issue it could resolve was whether the Government needed to produce the grand jury transcripts. *Id.*, Dkt. No. 304 at 4-5. Other disputed documents related to the Government's criminal investigation, such as documents shown to the grand jury, FBI interview notes of percipient witnesses, and FBI memos memorializing interviews with percipient witnesses (form 302s), "would almost certainly be relevant to the Illinois case" but "can be obtained through discovery in the civil suit, and the court there can deal with any objections." *Id.* at 5. Accordingly, Plaintiffs intend to file a motion to compel these materials with this Court, hopefully after the Government has provided Plaintiffs with complete and sufficiently detailed indexes by a date certain. With respect to the grand jury transcripts, the District of Colorado denied Plaintiffs' request, largely because Plaintiffs already have "access to the full transcript of the jury trial." *Id.* at 6. Plaintiffs intend to file soon a similar petition in the Northern District of Texas seeking grand jury transcripts related to that proceeding. In contrast to the Colorado proceeding, there was no jury trial in the Northern District of Texas,

and so Plaintiffs' need for the grand jury transcripts there is substantially greater.

The Government informed Plaintiffs that it objects to Plaintiffs' request for a deadline to provide indexes of withheld materials.

B. Defendants' Position

As Defendants DaVita Inc. and Kent Thiry explained in response to Plaintiffs' petition in the District of Colorado (*United States v. DaVita Inc., et al.*, Case No. 1:21-cr-00229-RBJ (D. Colo. Mar. 26, 2024), Dkt. No. 303), Defendants have not been included in the negotiations between Plaintiffs and the Government, and lack clarity as to the full scope of the materials at issue. If Plaintiffs file a motion to compel in this Court, Defendants request the opportunity to be heard, as they were in connection with Plaintiffs' prior motion to compel in this Court. *See* Dkt. No. 249. In addition, Defendants will file their positions, if any, on any petitions or motions filed by Plaintiffs in the District of Colorado or the Northern District of Texas once those petitions and/or motions are filed and as it is appropriate to do so.

V. ADDITIONAL MATTERS

The Parties respectfully note that they have outstanding disagreements with respect to the case schedule, as reflected in the Joint Status Report dated February 12, 2024 (Dkt. No. 357). The February 12 Joint Status Report was originally presented to Judge Wood but was not ruled upon before the reassignments in this matter. Plaintiffs emailed Defendants this afternoon to request that they extend the parties' proposed deadline of May 6, 2024, to move to amend the pleadings or add parties. *See* Dkt. No. 357-1 at 1. Defendants are evaluating Plaintiffs' request and will be prepared to address it at the case management conference.

Dated: April 18, 2024

Respectfully submitted,

/s/ Dean M. Harvey

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CERTIFICATE OF SERVICE

I, Dean M. Harvey, an attorney, hereby certify that the **Joint Status Report re: Update on Fact Discovery** was electronically filed on April 18, 2024, and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Dated: April 18, 2024

/s/ Dean M. Harvey

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